In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 174 of 1997 (O&M)
Date of decision:9-10-2006

M/s United Vanaaspati Limited .....Petitioner

Versus

M/S Shri Vardhman Solvex Private Limited. .....Respondent

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. M.L.Sarin, Senior Advocate, with
Mr. D.B.Singh, Advocate, for the petitioner.
Mr.S.S. Narula, Advocate, for the respondent

VINOD K.SHARMA,J. (ORAL)

The present revision petition has been filed against the order 11-9-1996 passed by the learned Additional Civil Judge (Sr. Divn), Panipat, holding therein that civil court at Panipat had the jurisdiction to entertain and try the matter.

The plaintiff-respondent herein had brought a suit against the defendant-petitioner for the recovery of Rs. 2,50,000/- with interest @ 18% per annum from the date of filing the present suit till the actual realisation of amount of the suit.

The plaintiff-respondent,which is a Private Limited company, filed the suit through its Managing Director on the basis of resolution dated 5-10-1987 on the ground that the defendant-petitioner

in December 1986 had agreed to purchase edible oils at Panipat from and promised to pay the amount of the supplied edible oils at Panipat to the plaintiff-respondent along with interest @ 18% P.A. which was the prevailing rate of interest in the market. In pursuance to the said agreement, the petitioner-defendant purchased edible oils commencing from 27-12-1986 upto 21-4-1987 for a total sum of Rs. 57,05,150/- on different dates from the plaintiff-respondent. Out of the said amount, a sum of Rs 54,80,974/- was paid by the defendant-petitioner on 3-1-1987 and 18-6-1987. The payment was made at Panipat for the said purchases.

The case of the plaintiff-respondent was that these amounts had been debited and credited in its accounts regularly maintained and therefore, a sum of Rs. 2,40,176/- as principal amount besides interest was due against the defendant-petitioner. The respondent-plaintiff sent a legal notice to the petitioner-petitioner to repay the sale price of Rs. 2,40,176/-, but the petitioner failed to do so.

The case of the plaintiff-respondent further was that the interest of more than Rs. 25,249/- @ 18% p.a. is also payable. However, the plaintiff in the suit claimed the principle amount along with interest of Rs. 25,249/- Thus the suit for the recovery of Rs. 2,50,000/- along with future interest @ 18% was filed.

On notice having been issued, the petitioner-defendant appeared and filed the written statement wherein a preliminary

objection was taken that the Civil Court at Panipat had no territorial jurisdiction to entertain and try the present suit.

The case set up by the defendant-petitioner was that the purchase orders were placed by the petitioner as per bargain struck through M/S Bansal & Company (Broker) 6454 Naya Bans, Delhi. It was the further case of the defendant-petitioner that according to terms and conditions No.8 as contained on the backside of the purchase order only the civil courts at Chandigarh had the territorial jurisdiction to try and entertain the present suit.

The other objection taken by the defendant-p[etitioner was that the plaintiff-respondent had suppressed the material facts from the Court and, therefore, the plaintiff was estopped from filing the present suit by its own act and conduct. The value of the suit for the purposes of court fee and jurisdiction was also challenged. Another objection was also raised that the suit was not filed by a duly authorised person. It was also claimed that the suit was not maintainable in the present form.

On merit, the defendant-petitioner admitted that the plaintiff was a Private Limited Company, but asserted that Shri Ram Bhaj Jain was not a duly authorised attorney on behalf of the plaintiff company to file the present suit. The execution of agreement for purchase of edible oils at Panipat was denied. It was also denied that the amount along with interest was payable at Panipat. It was the further case of the defendant-petitioner that it had started dealings with

the plaintiff-respondent from March 1986 when it placed two purchase orders No. 840/85-86 and 841/85-86 dated 21-3-1986 on the plaitniff and the said orders were placed according to the bargain struck through M/S Bansal & Co., New Delhi.

The case of the defendant-petitioner further was that the plaintiff-respondent failed to supply the goods as per purchase orders and that the payment against the purchase order was made to the plaintiff-respondent and nothing was due from the defendant-petitioner. All other allegations were also denied and it was prayed that the suit be dismissed with costs.

In the replication filed by the plaintiff-respondent, the averments made in the plaint were reiterated and that of the written statement was denied

On the pleadings of the parties, following issues were framed:-

"1. Whether the suit has been filed through duly authorised person ? OPP
2. Whether the plaintiff is entitled to recover Rs.2,50,000/- from the defendants, as alleged? OPP
3. Whether this Court has no jurisdiction to try and and entertain the present suit ? OPD.
4. Whether the plaintiff has suppressed material facts from the Court ?OPD.
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct. ?OPD
6. Whether the suit has not been filed property valued for the purposes of court fee and jurisdiction ?OPD

7. Whether the suit is not maintainable in the present form ?OPD
8. Whether the counter-claim is maintainable ?OPD
9. Relief."

Thereafter the defendant-petitioner filed an application under Order 14 rule 2 read with Section 151 of the Code of Civil Procedure praying that issue No.3 out of the issues framed be treated as preliminary issue. The said application was dismissed by the learned trial Court on 9-5-1988 against which a revision petition was filed in this Court which was accepted and directions were issued to the trial Court to treat issue No.3 as preliminary issue and decide the same in accordance with law. Both the parties were permitted to lead their evidence on the said issue and the trial Court was pleased to hold that it was for the defendant-petitioner to prove that the civil courts at Panipat had no territorial jurisdiction to entertain and try the present suit and only the civil courts at Chandigarh had the jurisdiction.

To discharge the onus, the defendant-petitioner examined Shri V.K.Puri, its Company Secretary, who deposed that in April 1987, he was posted as Company Secretary in the defendant-company and that he had to look after the day-to-day work of the defendant-company. It was claimed that the defendant-company has its Head Office at Chandigarh and also produced documentary evidence by way of registration certificate as Exhibit DW/1 and DW2/2. It was further claimed that the entire business of the defendant-company was at

Chandigarh and it had no office at Panipat. The defendant-petitioner also examined Shri Rajesh Bhardwaj, who while appearing as DW-2, deposed that he was posted as Assistant Manager in the defendant-company and he used to look after the sale and purchase of the company. He further deposed that dealings with the plaintiff-respondent took place through the broker in 1986. This witness proved the purchase orders Exhibits DW2/1, DW2/2, DW2/3, DW2/4. He also proved Exhibits DW2/5 to DW2/7 which were duly entered in the despatch register, besides photo copies of the despatch register as Exhibits DW2/9 and DW2/10. He also deposed that the terms and conditions of the purchase order are printed on the back side of the purchase orders Exhibit DW2/1 to Ex. DW2/7 and terms and conditions are Exhibit DW2/11.

On the other hand, the plaintiff-respondent examined Ram Bhaj Jain as PW-1, who deposed that he was the managing Director of the plaintiff-respondent, and controls the entire management of the plaintiff company. He further deposed that an agreement with the defendant-petitioner had taken place at Panipat and the payments were to be made at Panipatt. He also deposed that there was no agreement between the parties that in case of any dispute, only the civil courts at Chandigarh would have the territorial jurisdiction. The plaintiff-respondent further examined Kailash Chand Sharma, who deposed that while posted as Accountant in the plaintiff-company, he used to look after its accounts.

It was the case of the plaintiff-respondent that the defendant-petitioner purchased edible oils from the plaintiff and that the dealings started from27-12-1986 and continued upto 24-5-1987. It was the further case of the plaintiff-respondent that the defendant used to make the payment s through drafts at Panipat and the orders of the defendant- petitioner were to be supplied from Panipat. This witness proved bills Exhibits PW2/2 to PW2/30. It was also the case of the plaintiff-respondent that the plaintiff-company never collected payments at Chandigarh.

In support of his case, the petitioner-defendant placed reliance on clause 8 of the purchase order which reads as under:-

> "The contract shall be deemed to have been entered at Chandigarh and all proceedings, if any, shall be filed and litigated in the courts at Chandigarh and nowhere else."

Thus, on the basis of said clause, it was claimed that the civil court at Panipat had no jurisdiction to try and entertain the present suit. It was further claimed that from the statement of DW-1 and admission of PW-1 i.e. Managing Director of the plaintiff- company, it stood proved that the dealings were struck through M/s Bansal and Company, New Delhi. It was the further case of the defendant-petitioner that the plaintiff had asserted in the plaint that there was an agreement between the parties, but no such agreement was placed on record and, therefore, it was maintained by the defendant-petitioner that the purchase order was the only agreement between the parties. Therefore, it was claimed that in view of clause 8 of the purchase order, the civil

court at Panipat had no territorial jurisdiction to entertain and try the present suit. It was also claimed that even if the purchase order/ contract/agreement was not signed by the plaintiff-respondent, the position does not alter since the said orders were acted upon. In support of the contention, reliance was placed on Section 5 (ii) of the Sales of Goods Act, 1930 to contend that agreement can be in writing as well as oral or or partly oral and partly written. Further to support this contention reliance was placed by the defendant-petitioner on the judgment of the Hon'ble Supreme Court in the case of **Hakam Singh Vs. M/S Gammon (India) Limited, 1971 (1) SCC 286.** It was thereafter contended that the parties by agreement can confer jurisdiction in any of the two courts or more having jurisdiction in matter and in support of this contention reliance was placed on the cases reported as **M/s Angile Insulations Vs. M/S Devy Ashmore India Limited & another, 1995 (5) JT SC 179, S.Manuel Raj & Co. Vs. J Mani Lal & Co., AIR 1963 Gujarat 148, A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies Salem, 1989 2 SCC 163 (SC), Shankar Lal Narain Dass Mandala Vs. Nem Moufsil & Co. Ltd., AIR 1946 Privy Council 97 and State of Himachal Pradesh & Ors Vs. Ganesh Wood Products & Ors, JT 1995 (6) SC 485.**

On the other hand, the contention of the plaintiff-respondent was that there was no agreement between the parties that only Civil courts at Chandigarh would have the territorial jurisdiction to entertain and try the present suit. It was next contended that the

parties by contract can not vest jurisdiction in one court out of two or more courts of their own choice. It was submitted that the said court does not have jurisdiction. In the present case, there was no such agreement and clause 8 of the purchase order Exhibits DW2/2 and DW2/7 had no effect and it carries no weight in the eyes of law.

The next contention of the plaintiff-respondent was as the clause stood printed on the back side of the purchase order which was neither signed by the plaintiff-respondent nor by the defendant-petitioner. Therefore, it did not have any legal force. In support of this contention, reliance was placed by the plaintiff-respondent on the cases reported as **M/s Surajmall Shiwbhagawan Vs. M/s Kalinga Iron Works, AIR 1979 (Orissa) 126, Gandhi Pitchaiah Venkataraju and Co. Vs. V. Palukuri Jagansadhan and Co. Calcutta and others, AIR 1975 (A.P.) 32, and M/s Road Transport Corporation and others Vs. M/s Kirloskar Brothers Limited and others, AIR 1981 (Bombay) 299**

The learned trial Court came to the conclusion that authorities relied upon by the defendant-petitioner wee not applicable for want of agreement between the parties. It was further held by the learned trial Court that the reliance by the defendant-petitioner on clause 8 of the agreement was of no help to it in view of the law laid down in **M/S Surajmall Shiwbhagawan's case (supra), Grandhi Pitchaiah Venkataraju's case (supra) and M/S Road Transport Corporation and others' case (supra)** which were relied upon by the

plaintiff-respondent, wherein it was held that terms and conditions were not binding on the parties in the absence of written agreement and that the Courts had the jurisdiction to entertain and try the case as per the provisions of the CPC and Indian Contract Act. The learned trial Court, therefore,came to the conclusion that clause 8 printed on the back side of the purchase orders did oust the jurisdiction of the principal Court. The learned Court also took note of the fact that the agreement was executed between the parties at Panipat, goods were purchased from Panipat and payments were also made there. Hence the civil court at Panipat had the territorial jurisdiction to entertain and try the present suit. In support of this finding, reliance was placed on a judgment of the Hon'ble Andhra Pradesh High Court in the case of **Central Ware Housing Corporation, New Delhi Vs. Central Bank of India Ltd., Hyderabad and another, AIR 1973 A.P. 389.**

It was also the case of the plaintiff -respondent that the courts in whose jurisdiction Branch office of the corporation is situated had also the the jurisdiction to entertain and try the present suit and the trial Court observed that admittedly the branch office of the defendant-company and head office of the plaintiff were situated at Panipat and, therefore, the civil court at Panipat had the jurisdiction to entertain and try the present suit. Reliance in this regard was placed on a judgment of this Court in **Surinder Kumar Arora Vs. The Bengal Naional Textile Mills Ltd., Calcutta, AIR 1978 (P&H), 156** and accordingly, it was held that the civil courts at Panipat had the

jurisdiction to entertain and try the present suit.

Mr. M.L.Sarin, learned senior counsel appearing for the petitioner has vehemently contended that the finding of the learned trial Court to the effect that clause 8 of the purchase orders was not binding on the parties cannot be sustained in view of the judgments of the Hon'ble Supreme Court reported in **Hakam Singh's case (supra), A.B.C. Laminart Pvt. Ltd.'s case (supra), Mr. Angile Insulation's case (supra), M/s Hanil Era Textile Ltd. Vs. M/s Puromatice Filters (P) Ltd. JT 2004 (Suppl. 1) SC 57** and the judgment of this Court in the case of **M/S Associated Cement Company Ltd. And another Vs. M/s Commercial Gases, 2000 (3) PLR 389.** In the aforesaid judgments, the Hon'ble Supreme Court has been pleased to lay down that the parties by agreement can confer jurisdiction on one of the courts having jurisdiction which alone shall try the dispute between the parties. The said proposition was not held to be contrary to the public policy.

The Hon'ble Supreme Court in **M/s Hanil Era Textiles Ltd. Vs. M/s Puromatic Filters (P) Ltd. (supra) has been pleased to lay down as under:-**

> "7. The effect of clause 17 of the purchase order which mentions – any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts in Mumbai, has to be examined in the aforesaid background. Under sub-sections (a) and (b) of Section 20, the place of residence of the defendant or where he carries on business or works for gain is determinable of the local limits of

jurisdiction of the court in which the suit is to be instituted. Sub-section (c) of Section 20 provides that the suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, accrues. As shown above, in the present case, part of cause of action had accrued in both the places viz. Delhi and Bombay. In Hakam Singh vs. Gammon (India) Ltd., it was held that it is not open to the parties to confer by their agreement jurisdiction on a court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene section 28 of the Contract Act.

9. Clause 17 says – any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts in Mumbai. The clause is no doubt not qualified by the words like “alone”, “only”, “exclusively”. Therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other courts except courts in Mumbai, is excluded. Having regard to the fact that the order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay and as per the plaintiff's case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the Courts in Bombay to the exclusion of all other Courts. The Court of additional district judge, Delhi had, therefore, no territorial

jurisdiction to try the suit."

The contention of the learned counsel for the petitioner is that once the evidence was brought on record to show that the petitioner has the principal place of business at Chandigarh, therefore, in view of Section 20 of the Code of Civil Procedure it was open to the plaintiff-respondent to have sued the petitioner at Chandigarh and therefore, the civil courts at Chandigarh had the jurisdiction to entertain and try the present suit as clause 8 of the purchase order would oust the jurisdiction of the Panipat courts. The contention of the learned senior counsel for the petitioner was that once the purchase orders were accepted by the plaintiff-respondent, it was not open to the plaintiff to claim that the civil courts at Panipat had the jurisdiction merely on the ground that the same have not been signed. This contention is contrary to the law laid down by the Hon'ble Supreme Court in the above mentioned judgments.

On the other hand, Mr.s.S.Narula, learned counsel for the plaintiff-respondent vehemently contended that no purchase order was placed by the petitioner on the plaintiff company and, therefore, no benefit from clause 8 of the purchase order could be taken especially when the stand of the petitioner-defendant was that the deal had been finalised through broker – M/s Bansal & Company. He further referred to the statement of DW-2 to contend that he has nowhere stated that the purchase orders were placed on the plaintiff-respondent. However,

this contention cannot be accepted as the bills placed on record by the plaintiff-respondentitself show that the supplies were made in pursuance to the purchase orders the particulars of which find mention in the said bills.

The learned counsel for the plaintiff-respondent thereafter placed reliance on the judgment of the Hon'ble Supreme Court in **U.P.Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. And others, AIR 1996 SC 1373** to contend that unless the conditions in the purchase orders are accepted, no contract between the parties could be presumed to have been concluded. It is not in dispute that there was no written agreement between the parties. In the absence of any agreement between the parties, clause 8 of the purchase order was binding on him especially when the supplies were made in pursuance to purchase order.

Thereafter the learned counsel for the plaintiff-respondent placed reliance on the judgment of the Hon'ble Kernala High Court in the case of **The South Eastern Roadways Vs. The United India Insurance Co. Ltd. AIR 1991 Kerala 41,** to contend that as the purchase orders have not been signed on the reverse by the plaintiff-respondent, they could not bind the plaintiff and, therefore, the learned trial Court was right in observing that the Panipat court had the territorial jurisdiction as part of the cause of action arose there because purchase orders were placed at Panipat and goods were supplied from Panipat.

However, reliance of the learned counsel is misplaced as this judgment runs contrary to the law laid down by the Hon'ble Supreme Court in the cases referred to above, wherein it has been held that when the supplies of material are made in pursuance to the purchase orders, then terms and conditions printed on the back side are binding. But in the present case, in the purchase orders, it was specifically mentioned that orders have been placed as per terms and conditions contained overleaf, wherein clause 8 clearly provided that in case of any dispute between the parties, the civil courts only at Chandigarh would have the jurisdiction.

Learned counsel for the respondent further placed reliance on the judgment of this Court in **Firm Chhelu Mal Hari Ram and others Vs. Firm Mangtu Ram Devki Nandan and others, AIR 1972 P&H 401,** to contend that the wrong finding by trial Court on issue of territorial jurisdiction cannot not be reversed, unless it is shown that it has resulted in failure of justice to a party. I fear that this judgment does not help the case of the plaintiff-respondent, as in the case in hand the issue of territorial jurisdiction was treated as a preliminary issue in pursuance to the acceptance of the earlier revision petition by this Court and, therefore, this judgment has no application to the facts of the present case.

In view of what has been stated above, the revision petition is accepted, the impugned is set aside and the learned trial Court is directed to return the plaint to the plaintiff-respondent for its

presentation in a court of competent jurisdiction.

October 09,2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**